



# **Montana Fish, Wildlife & Parks**

January 30, 2003

P.O. Box 200701  
Helena, MT 59620-0701

Environmental Quality Council  
Montana Department of Environmental Quality  
Montana Department of Fish, Wildlife and Parks  
Fisheries Division  
Endangered Species Coordinator  
Native Species Coordinator, Fisheries  
Bozeman Office  
MT Environmental Information Center  
Montana Audubon Council  
State Historic Preservation Office  
Park County Conservation District, Route 62, Box 3197, Livingston, MT 59047  
U.S. Army Corp of Engineers, Helena  
U.S. Fish and Wildlife Service, Helena  
Montana State Library, Helena  
Joe Brooks Chapter, Trout Unlimited, P.O. Box 1378, Livingston, MT 59047  
Frank Rigler, P.O. Box 970, Gardiner, MT 59030  
J. Pojman, 2402 Knollwood, Gillette, WY 82718  
W. Roberts, 162 Pleasant Lane, Belgrade, MT 59714  
M. Adkins, 1076 Highway 89 South, Gardiner, MT 59030  
J. & C. McPherson, P.O. Box 464, Gardiner, MT 59030  
P. & K. Hayes, P.O. Box 187, Gardiner, MT 59030  
Mickelson Trust, 329 W. Valerio St., Santa Barbara, CA 93101  
H. & D. Rate, P.O. Box 966, Gardiner, MT 59030  
J. & D. Robidou, River Route Box 470, Gardiner, MT 59030  
B. & J. Freeland, 8 Sphinx Drive, Gardiner, MT 59030  
N. & N. Castagna, River Route Box 400, Gardiner, MT 59030  
P. & A. Wickham, P.O. Box 888, Gardiner, MT 59030  
Gallatin National Forest, P.O. Box 130, Bozeman, MT 59771  
Ken Britton, Gardiner Ranger District, P.O. Box 5, Gardiner, MT 59030  
C. Lyness, P.O. Box 251, Gardiner, MT 59030  
Royal Teton LTD, 558 Old Yellowstone Trail S, Corwin Springs, MT 59030  
L. Burgard, P.O. Box 233, Gardiner, MT 59030  
W. & C. Wagner, Jardine Rt. Box 65, Gardiner, MT 59030  
T. & D. Venable, P.O. Box 1117, Livingston, MT 59047  
W. Dewing, 707 West Crawford, Livingston, MT 59047  
D. Baker, 513 Neyman St., Salmon, ID 83647

*Park  
MISC*

Ladies and Gentlemen:

In October 2002, you received a draft environmental assessment (EA) prepared for a Future Fisheries Improvement Project tentatively planned to improve instream flows in lower Cedar Creek, a tributary to the Yellowstone River located approximately 10 miles north of the town of Gardiner.

Based on the EA, it is my decision to proceed with providing funding through the Future Fisheries Improvement Program for the Cedar Creek Water Leasing Project. Completion of this project remains contingent upon approval of both a "Change" application and a water use permit application by the Montana Department of Natural Resources and Conservation, as well as approval of the water lease agreement by the Fish, Wildlife and Parks Commission.

I find no significant impacts associated with this action and conclude an Environmental Impact Statement is not warranted. The completed EA and the attached Decision Notice provide an appropriate level of analysis. Please consider the draft EA and Decision Notice as the final document.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Lere', written in a cursive style.

Mark Lere  
Habitat Protection Bureau  
Fisheries Division

# **DECISION NOTICE**

## **CEDAR CREEK WATER LEASING PROJECT**

**Prepared By**  
**Montana Fish, Wildlife and Parks**  
**January 30, 2003**

### **I. Proposal**

Montana Fish, Wildlife and Parks (FWP) proposes to provide funding through the Future Fisheries Improvement Program to improve in-stream flows in lower Cedar Creek, a tributary to the Yellowstone River located approximately 10 miles north of the town of Gardiner.

### **II. Montana Environmental Policy Act (MEPA)**

MEPA required FWP to assess the potential consequences of this proposed action for the human and natural environment. The proposal was detailed in an Environmental Assessment (EA) completed by FWP on October 18, 2002. The 30-day comment period for this EA ended November 18, 2002.

Issues raised during the public comment period on the EA are addressed in the comments section of this Decision Notice. The Draft EA and Decision Notice will serve as the final document.

### **III. Summary of Public Comment**

As of November 18, 2002, FWP had received one written letter from an individual outlining a series of concerns. No other comments were received on the Draft EA. The issues outlined in the letter and corresponding responses by FWP are presented as follows:

- 1. Dissatisfaction with the calibration and location of the existing gage near the creek's mouth.*

FWP relies on the expertise of the USGS to annually recalibrate the gage's rating table. With a proposed FWP staff position being redirected to help with lease administration (in part), FWP may be able to periodically measure discharges to verify the accuracy of the rating table, particularly at the lower stream flows. The gage is located at the best available site in this steep, turbulent stream reach. Other sites were explored by the USGS and rejected due to their unsuitability.

- 2. Dissatisfaction with the measuring box on the Simonson Ditch weir. The rating is inaccurate (although readings favor the Simonson Ditch users), and the bulkhead is difficult to raise and lower.*

Measurements by FWP verify that the weir's rating table currently underestimates the magnitude of the diverted flow. Again, with additional program resources, FWP may be able to recalibrate the rating table to more accurately reflect flows. FWP, at this time, does not have the funding to replace or renovate the existing weir, which cost FWP about \$7000 to build and install. FWP may be able to provide assistance lowering the bulkhead early in the irrigation season and raising it at the end of irrigation if needed.

3. *In severe drought the undepleted flow of Cedar Creek is less than the Simonson Ditch right, which is the first priority right on the creek. Under these extreme conditions, passing 0.5 cfs of flow will sustain cutthroat production.*

FWP recognizes the fact that the availability of water for instream use is limited in severe drought events. We appreciate the water users' willingness to pass 0.5 cfs during these extreme events to maintain a flowing channel and help preserve cutthroat production.

4. *A 3.0 cfs minimum is a reasonable target, if some "give and take" is allowed.*

The amount to be bypassed for instream use has not been finalized at this time. A final determination will be presented in FWP's "change" application to be submitted to DNRC. FWP agrees that a total instream flow in the neighborhood of three cfs would be a reasonable target to begin discussions. FWP also agrees that whatever the final amount, maintaining this minimum at all times is not realistic and will not be an absolute requirement under the lease. Normal diurnal flow fluctuations and drought events could influence the bypassed amount, causing it to fall below the "target" for short periods.

5. *FWP needs to coordinate with the Highway Department on the replacement of the Highway 89 culvert on Cedar Creek.*

**Response:** FWP's biologist in Livingston, Joel Tohtz, is working with Highway Department engineers to ensure the new culverts are designed to allow fish passage and not degrade spawning habitat.

6. *Closing of the Rigler Ditch will result in the death of ditch-side cottonwoods and other vegetation. Consideration should be given to allowing a modest flow to be diverted into the Rigler Ditch to sustain woody vegetation.*

**Response:** FWP is considering and researching the legality of implementing this suggestion. However, one of the main benefits associated with this proposed project is preventing fish from being lost down the canal. If the Rigler ditch were to remain open in order to sustain the woody vegetation along the ditch banks, fish would continue to be lost down the canal during times the ditch remained active. Mitigation for this loss of fish would require installation of an expensive fish screen.

**IV. Modifications to the Environmental Assessment**

Modifications to the Draft EA are deemed to be unnecessary.

**V. Decision**

After review of the proposal, it is my decision to proceed with providing funding through the Future Fisheries Improvement Program for the Cedar Creek water leasing project. The action will benefit the fishery and riparian wildlife on Cedar Creek.

I find there to be no significant impacts associated with this action and conclude that an Environmental Impact Statement is not needed. The completed EA and the Decision Notice provide an appropriate level of analysis.

A handwritten signature in black ink, appearing to read 'Mark Lere', is positioned above the typed name.

Mark Lere, Program Officer  
Habitat Protection Bureau  
Fisheries Division